IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No. 1250 of 2005
with
Civil Application No. 1734 of 2005

Pandit Manohar Keni ..Appellant

vs.

1. Vyankatrao Gopalrao Nayakwade
and another ..Respondents

Shri Kulkarni i/b Shri Rajiv Patil for appellant.
Shri Mandar Limaye for respondent nos.1 and 2

CORAM: S.C.DHARMADHIKARI J.
18th July, 2007

P.C.

1. Heard Shri Patil appearing for the appellants/original plaintiffs. The suit laid by the original plaintiff/appellant was dismissed by the Trial Court and appeal therefrom has also been rejected by the impugned appellate judgment.

2. Only two contentions have been canvassed by Shri Patil to support the plea that substantial questions of law would arise in the present second appeal. His first submission is that the sale deeds Exh.26 and Exh.27 are unregistered but that by itself would not throw the plaintiff's case in toto. In his submission, these documents were executed on the stamp papers which were

found to be insufficient. In other words, requisite stamp duty having not been paid, these documents were not read in evidence. He submits that an application/purshis was filed when these documents were sought to be tendered pointing out therein that the appellant/plaintiff is ready and willing to pay the deficit stamp duty and moment the same is done these documents can be taken on record.

3. The second submission is that the document which is proved and produced at the time of trial was exhibited but contents thereof were not proved and such being the case, the suit which was filed by the appellant/plaintiff has been erroneously dismissed. There is no merit in both these contentions. The suit was laid on the basis that the plaintiff is the owner of the suit property. The plaintiff produced the sale deeds executed between him and one Rajendrakumar Bhalchandra Sharma so also Shobha Maruti Kalambe. The Courts below have found that the subject sale deeds, even if to be taken on record, do not mention the house number. The plaint is also silent with regard to the description of the immovable property which is subject matter of the sale deeds. There is no question of law much less substantial question of law which would arise for consideration in the backdrop of such factual position. If the suit on title with which the plaintiff has approached the Trial Court does not contain in the plaint either the survey number or boundaries and does not

give description of the immovable property, then, merely because an application was made to have the sale deeds exhibited on record would not advance the case of the plaintiff any further. The requirements stipulated by Order 7 Rule 3 of the Code of Civil Procedure having been concurrently found not to be satisfied, then, there is no question of interfering with these findings.

4. So far as the second submission is concerned, the Courts below upon the material produced, have found that one Shubhangi Naikwadi who was the daughter of the defendant to the suit had given the property on rental basis. The terms of the tenancy together with the details were placed on record. The tenancy agreement and the contents thereof have been proved and inadvertently the tenancy agreement remained to be exhibited. Reasoning in para 9 of the Trial Court judgment which speaks of the socalled omission to exhibit the document but all its contents having been proved is not such which can be said to be perverse or vitiated by any error as contended.

5. The Trial Court’s reasoning was challenged and lower Appellate Court as well has observed that the socalled omission is not fatal. That there also the lower Appellate Court after taking into consideration the rival contentions was of the view that the lease agreement which is otherwise capable of being read in evidence could not

be ignored merely because it remained to be exhibited. These are the procedural matters and depending upon the attending facts and circumstances such procedural errors cannot be said to be fatal to the case of the parties. Everything depends upon the facts and circumstances of each case. In the present case the title having not been proved by the appellant/plaintiff, I do not see any reason to go into the academic issue.

6. No substantial question of law is raised in as much as the findings of fact are consistent with the material placed on record and require no interference in this Court's jurisdiction under sec.100 of the Code of Civil Procedure. Appeal is dismissed.

7. In view of dismissal of the second appeal civil application does not survive and hence dismissed.

(S.C.DHARMADHIKARI J.)